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Philip ak Uja v Public Prosecutor

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COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO Q-05(M)-158–05 OF 2020
AZIZAH NAWAWI, NANTHA BALAN AND HASHIM HAMZAH JJCA
29 SEPTEMBER 2023

C

Criminal Law — Murder — Circumstantial evidence — Whether accused had caused bodily injuries on deceased which led to her death — Whether circumstantial evidence pointed irresistibly to conclusion of guilt of accused

D

Criminal Procedure — Appeal — Appeal against conviction and sentence — Accused convicted for offence of murder and sentenced to death — Whether prima facie case proven — Whether accused had caused bodily injuries on deceased which led to her death — Whether circumstantial evidence pointed irresistibly to conclusion of guilt of accused — Whether there was misdirection by trial judge to occasion an error either on law or facts which warranted appellate intervention — Penal Code s 302

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The accused ('the appellant') was charged under s 302 of the Penal Code for the murder of Nurnia Azalea Priscilla ('the deceased'). Based on the charge, the crime was committed between 8pm on 1 August 2018 and 2.30pm on 2 August 2018. The deceased was found in her room which was situated on the ground floor of a house located in the district of Sibu, Sarawak ('the house'). The prosecution's case against the appellant was based on the following evidence: (a) the evidence of PW3, a grab driver who dropped the appellant off at the house on 1 August 2018; (b) the testimony of PW4, one of the tenant of the house who saw the appellant inside the house and the bathroom until he left before PW5, the appellant's ex-girlfriend who was also a tenant of the house came back home at around 8.30pm to 9.30pm; (c) the evidence of PW5 that the appellant had spare keys to the house and her room; (d) the evidence of PW6 who lived on the first floor of the house who heard a loud 'AAAA' scream by a women three times; (e) the evidence of PW16, the deceased's husband testifying that the gold necklace and mobile phone that were sold by the appellant were the personal belonging of the deceased; (f) the evidence that the appellant had given information to the police which led to the discovery of the deceased's gold necklace and phone; and (g) the evidence of PW16 which showed that the deceased was last seen alive by PW16 through a video call on 1 August 2018 at around 7.30pm. At the end of the prosecution's case, the trial judge found that a prima facie case was established, and the appellant was then ordered to enter his defence. In defence, the appellant admitted that he stole

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the said necklace and phone but argued that he went to the house on 30 July 2018 and not on 1 August 2018. At the end of the trial, the trial judge found that the appellant had failed to raise any reasonable doubt in the prosecution's case and that the prosecution had successfully proven its case beyond reasonable doubt. As a result, the appellant was convicted of murder and sentenced to death, hence, the present appeal. The main issue arose in the present appeal was whether the appellant was the one who had caused the bodily injuries inflicted on the deceased, which led to her death.

Held, dismissing the appeal, and affirming the conviction and sentence against the appellant:

(1) The court agreed with the learned trial judge that the prosecution's case against the appellant was wholly based on circumstantial evidence. There were no eyewitnesses who saw the appellant committing the offence. Thus, in cases where the prosecution relying on circumstantial evidence to prove their case, the onus was heavy, and the evidence must point irresistibly to the conclusion of the guilt of the accused (see paras 44 & 47).

(2) In the present case, the following circumstantial evidence which were adduced by the prosecution was unchallenged: (a) the evidence of PW3 and PW4 which had placed the appellant squarely at the crime scene on 1 August 2018 from around 7.45pm to 9.30pm; (b) the evidence of PW5 that the appellant had spare keys to the house and her room which showed that the appellant had access to the house; (c) the evidence of PW16 testifying that the gold necklace and phone that were sold by the appellant were the personal belonging of the deceased; (d) the evidence that the appellant had given information to the police which led to the discovery of the deceased's gold necklace and phone; and (e) the evidence of PW16 which showed that the deceased was last seen alive by PW16 through a video call on 1 August 2018 at around 7.30pm. The evidence of PW6 who heard a loud 'AAAA' scream by a women three times was challenged by the appellant, but this evidence remained unshaken. Further, there was no evidence that anyone else had been in the deceased's room on the evening of 1 August 2018. Based on the evidence and the appellant's admission, he was the last person seen and known to be at the crime scene (see paras 51–54, 58–60, 64, 67–68 & 71).

(3) The totality of the evidence and the prevailing surrounding circumstances irresistibly pointed to the fact that the deceased's belongings could not have been transferred from the deceased to the appellant (and after that to the relevant witnesses) except after the appellant had murdered the deceased. The court found that the appellant's explanation that he stole the gold necklace and phone on 30 July 2018 was nothing more than a mere denial and concoction. It was

an afterthought. Indeed, if the phone had been stolen on 30 July 2018, then it would have been impossible for the deceased to have spoken to PW16 via video call on 1 August 2018 at 7.30pm. This alone demolished the appellant's purported theft on 30 July 2018 (see para 74).

(4) Based on all the above, the court agreed with the learned trial judge that the various strands of circumstantial evidence, cumulatively considered, pointed to the irresistible conclusion that the appellant had murdered the deceased on the date and time as per the charge. The court also observed that the learned trial judge was always mindful of the relevant principles on the burden of proof throughout the trial. There was no misdirection on the part of the learned trial judge in all his findings. In conclusion, the court agreed with the learned trial judge that the appellant had failed to raise any reasonable doubt on the prosecution's case and that the prosecution had proven their case against the appellant beyond reasonable doubt. The court was also satisfied that the learned trial judge had not misdirected himself to occasion an error either on the law or the facts, which would otherwise warrant appellate intervention (see paras 77–80).

[Bahasa Malaysia summary

Tertuduh ('perayu') dituduh di bawah s 302 Kanun Keseksaan kerana membunuh Nurnia Azalea Priscilla ('si mati'). Berdasarkan pertuduhan, jenayah tersebut dilakukan antara jam 8 malam pada 1 Ogos 2018 dan 2.30 petang pada 2 Ogos 2018. Si mati ditemui di dalam biliknya yang terletak di tingkat bawah sebuah rumah yang terletak di daerah Sibu, Sarawak ('rumah tersebut'). Kes pendakwaan terhadap perayu adalah berdasarkan keterangan berikut: (a) keterangan PW3, seorang pemandu Grab yang menurunkan perayu di rumah tersebut pada 1 Ogos 2018; (b) keterangan PW4, salah seorang penyewa rumah tersebut yang melihat perayu berada di dalam rumah dan bilik air sehingga dia keluar sebelum PW5, bekas teman wanita perayu yang juga penyewa rumah tersebut pulang ke rumah sekitar jam 8.30 malam hingga 9.30 malam; (c) keterangan PW5 bahawa perayu mempunyai kunci pendua rumah tersebut dan biliknya; (d) keterangan PW6 yang tinggal di tingkat satu rumah tersebut yang mendengar jeritan kuat 'AAAA' oleh seorang wanita sebanyak tiga kali; (e) keterangan PW16, suami si mati yang memberi keterangan bahawa rantai leher emas dan telefon bimbit yang dijual oleh perayu adalah barangan peribadi milik si mati; (f) keterangan bahawa perayu telah memberikan maklumat kepada polis yang membawa kepada penemuan rantai leher emas dan telefon si mati; dan (g) keterangan PW16 yang menunjukkan si mati kali terakhir dilihat hidup oleh PW16 melalui panggilan video pada 1 Ogos 2018 lebih kurang jam 7.30 malam. Pada akhir kes pendakwaan, hakim bicara mendapati bahawa kes prima facie telah dibuktikan, dan perayu kemudiannya diperintahkan untuk membela diri. Dalam pembelaan, perayu mengaku bahawa dia telah mencuri rantai leher dan

telefon tersebut tetapi berhujah bahawa dia pergi ke rumah tersebut pada 30 Julai 2018 dan bukannya pada 1 Ogos 2018. Pada akhir perbicaraan, hakim bicara mendapati perayu telah gagal menimbulkan apa-apa keraguan munasabah dalam kes pendakwaan dan bahawa pihak pendakwaan telah berjaya membuktikan kesnya melampaui keraguan munasabah. Akibatnya, perayu telah disabitkan dengan kesalahan membunuh dan dijatuhkan hukuman mati, justeru, rayuan semasa. Isu utama yang timbul dalam rayuan ini ialah sama ada perayu adalah orang yang menyebabkan kecederaan badan yang dikenakan ke atas si mati, yang membawa kepada kematiannya.

Diputuskan, menolak rayuan dan mengesahkan sabitan dan hukuman terhadap perayu:

(1) Mahkamah bersetuju dengan hakim bicara yang bijaksana bahawa kes pendakwaan terhadap perayu adalah berdasarkan keterangan ikut keadaan. Tiada saksi mata yang melihat perayu melakukan kesalahan tersebut. Oleh itu, dalam kes-kes di mana pihak pendakwaan bergantung kepada keterangan ikut keadaan untuk membuktikan kes mereka, tanggungjawabnya adalah berat, dan keterangan mesti menunjukkan kepada kesimpulan yang tidak dapat dinafikan tentang kebersalahan tertuduh (lihat perenggan 44 & 47).

(2) Dalam kes ini, keterangan mengikut keadaan berikut yang dikemukakan oleh pihak pendakwaan tidak dicabar: (a) keterangan PW3 dan PW4 yang telah meletakkan perayu betul-betul di tempat kejadian pada 1 Ogos 2018 dari sekitar jam 7.45 malam hingga 9.30 malam; (b) keterangan PW5 bahawa perayu mempunyai kunci pendua rumah tersebut dan biliknya yang menunjukkan perayu mempunyai akses kepada rumah tersebut; (c) keterangan PW16 yang memberi keterangan bahawa rantai leher emas dan telefon yang dijual oleh perayu adalah milik peribadi si mati; (d) keterangan bahawa perayu telah memberikan maklumat kepada polis yang membawa kepada penemuan rantai leher emas dan telefon si mati; dan (e) keterangan PW16 yang menunjukkan si mati kali terakhir dilihat hidup oleh PW16 melalui panggilan video pada 1 Ogos 2018 sekitar jam 7.30 malam. Keterangan PW6 yang mendengar jeritan kuat 'AAAA' oleh seorang wanita sebanyak tiga kali telah dicabar oleh perayu, tetapi keterangan ini tetap tidak goyah. Tambahan pula, tiada bukti bahawa orang lain telah berada di dalam bilik si mati pada petang 1 Ogos 2018. Berdasarkan keterangan dan pengakuan perayu, dia adalah orang terakhir yang dilihat dan diketahui berada di tempat kejadian (lihat perenggan 51–54, 58–60, 64, 67–68 & 71).

(3) Keseluruhan keterangan dan keadaan sekeliling yang lazim secara tidak dapat dinafikan menunjukkan fakta bahawa barang-barang si mati tidak boleh dipindahkan daripada si mati kepada perayu (dan selepas itu kepada saksi-saksi yang berkaitan) kecuali selepas perayu membunuh si

mati. Mahkamah mendapati penjelasan perayu bahawa dia mencuri rantai emas dan telefon tersebut pada 30 Julai 2018 hanyalah penafian dan rekaan semata-mata. Ia adalah satu pemikiran terkemudian. Sememangnya, jika telefon tersebut telah dicuri pada 30 Julai 2018, maka mustahil untuk si mati bercakap dengan PW16 melalui panggilan video pada 1 Ogos 2018 jam 7.30 malam. Ini sahaja telah menafikan bahawa perayu yang dikatakan mencuri pada 30 Julai 2018 (lihat perenggan 74).

(4) Berdasarkan semua di atas, mahkamah bersetuju dengan hakim bicara yang bijaksana bahawa setiap keterangan ikut keadaan tersebut, yang dipertimbangkan secara kumulatif, menunjukkan kesimpulan yang tidak dapat dinafikan bahawa perayu telah membunuh si mati pada tarikh dan masa mengikut pertuduhan. Mahkamah juga memerhatikan bahawa hakim bicara yang bijaksana sentiasa mengambil kira prinsip yang berkaitan mengenai beban pembuktian sepanjang perbicaraan. Tidak ada salah arah di pihak hakim bicara yang bijaksana dalam semua dapatannya. Kesimpulannya, mahkamah bersetuju dengan hakim bicara yang bijaksana bahawa perayu telah gagal menimbulkan apa-apa keraguan munasabah terhadap kes pendakwaan dan bahawa pihak pendakwaan telah membuktikan kes mereka terhadap perayu melampaui keraguan munasabah. Mahkamah juga berpuas hati bahawa hakim bicara yang bijaksana tidak tersalah arah dirinya untuk menimbulkan kesilapan sama ada pada undang-undang atau fakta, yang jika berlaku akan memerlukan campur tangan rayuan (lihat perenggan 77–80).]

Cases referred to

Amathevelli a/p R Ramasamy v PP [2008] 3 MLJ 782; [2008] 4 CLJ 413, CA (refd)
Chan Chwen Kong v PP [1962] 1 MLJ 307; [1962] 1 LNS 22, CA (refd)
Chang Kim Siong v PP [1968] 1 MLJ 36; [1967] 1 LNS 18, FC (refd)
Chean Siong Guat v PP [1969] 2 MLJ 63; [1969] 1 LNS 23 (folld)
Krishna Rao Gurumurthi & Anor v PP and another appeal [2007] MLJU 888; [2007] 4 CLJ 643, CA (refd)
Lim Hean Chong @ Teo Hean Chong v PP [2012] 1 MLJ 149; [2012] 2 CLJ 1046, CA (refd)
Low Kian Boon & Anor v PP [2010] 4 MLJ 425; [2010] 5 CLJ 489, FC (refd)
Noralina Ahmad Dasuki & Anor v PP [2013] 1 LNS 1477, CA (refd)
PP v Azilah bin Hadri & Anor [2015] 1 MLJ 617; [2015] 1 CLJ 579, FC (refd)
PP v Lim Kiang Chai [2016] 2 MLJ 153; [2016] 4 CLJ 173, FC (refd)
PP v Sarjit Kaur a/p Najar Singh [1998] 1 MLJ 184; [1998] 5 CLJ 609, HC (refd)
That Wei v PP [2021] 6 MLJ 167; [2021] 1 LNS 1358, CA (refd)
Wong Swee Chin v PP [1981] 1 MLJ 212; [1980] 1 LNS 138, FC (refd)

Legislation referred to

Penal Code ss 300, 300(c), 302, 376

Appeal from: *Public Prosecutor v Philip anak Uja* [2020] MLJU 385 (High Court Sibu, Sibu)

Harold Emparak ak Kerebo (Gapor & Co Advocates) for the appellant.
Samihah Rhazali (Deputy Public Prosecutor, Attorney General's Chambers) for the respondent.

Hashim Hamzah JCA:

INTRODUCTION

[1] The appellant was charged under s 302 of the Penal Code for the murder of Nurnia Azalea Priscilla ('deceased'). The charge against the appellant reads:

> That you between 8.00 pm on the 1st August 2018 and 2.30 pm on 2nd August 2018, at an unnumbered room at No. 9B Tiong Hua Road, in the district of Sibu, in the State of Sarawak, did commit murder by causing the death of one Nurnia Azalea Priscilla bt Edward (F) NRIC: 920303–13–5036, and you thereby committed an offence, punishable under section 302 of the Penal Code.

[2] The appellant pleaded not guilty to the charge under s 302 of the Penal Code. The matter went for a full trial before the learned trial judge. On 11 March 2020, at the conclusion of the trial, the appellant was found guilty and convicted of the offence. He was sentenced to death. This is the appellant's appeal against the said decision.

[3] The appellant was also charged under s 376 of the Penal Code for allegedly raping the deceased. The learned trial judge found that no prima facie case was made out for the offence of rape under s 376 of the Penal Code, and there was no appeal against the said decision.

THE PROSECUTION'S CASE

[4] A total of 19 witnesses gave evidence for the prosecution. The learned trial judge has extensively outlined the case for the prosecution in his grounds of judgment. We respectfully adopt them with some necessary modifications.

[5] In the present case, the crime scene is an unnumbered room in a house at No 9B Tiong Hua Road, Sibu, Sarawak ('the house'). At the material time, only five people lived in the house. Jelawat ak Lee ('PW4'), Cecilia ak Inggong ('PW5') and the deceased all lived in their respective rooms on the ground floor, which had three rooms. Lee Mee Ung ('PW6') and his grandson lived on

the first floor. They were all tenants in the house. According to the evidence, the unnumbered room where the deceased's body was found, was the deceased's room.

[6] PW4 came to know about a room at the house which was available for rent through PW5. She met PW5 at the house on 30 July 2018 to finalise the rental terms, which were agreed at RM180 per month. At that time, PW4 was introduced to the deceased, who told her that her rental was to be paid to the deceased.

[7] On 1 August 2018 at around 6.30pm, PW4 collected the keys to her room from PW5. After PW4 left her bags in her room, she went out shopping.

[8] On the same day, at around 7.30pm, the deceased's husband, Mohd Zakaria Ahmad ('PW16'), a clerk at SK Kuala Tatau in Bintulu, received a video call from the deceased. During the video call, the deceased told PW16 that she had arrived at the house gate and would call him later. That was the last time he heard from her and saw her alive. PW16 tried to call the deceased at around 11pm that night, but his call was unanswered.

[9] Samat bin Iderus ('PW3') a lecturer at the University College of Sibu and a part-time Grab driver, testified that on 1 August 2018 at around 7.45pm, he dropped the appellant off at the house after picking him up at Lorong Dik Kong 31. PW3 could identify the appellant since the appellant had used his services before, which was on 28 July 2018.

[10] PW4 returned to the house between 8pm to 8.30pm after her shopping. She noticed that the light was on in the deceased's room. She tried calling out to the deceased and knocked on her door, but there was no response. She heard the sound of splashing water from the bathroom and thought the deceased was taking her bath. When she approached the bathroom, she saw the appellant inside. PW4 saw the appellant from a five metre distance and enquired about the deceased's whereabouts. The appellant told her that the deceased was not yet home. PW4 then went outside the house and sat at the stairs leading to the first floor.

[11] PW6 gave evidence that at around 8.30pm, while he was in his room on the first floor, he heard a loud 'AAAA' scream by a woman three times which he was confident came from the ground floor. However, PW6 did not think it necessary to call the police or seek help since he thought one of the women living below had seen a snake in the back garden.

[12] After a while, PW4 saw the appellant coming out from the house while talking on his handphone in a hurried tone and then went back into the house.

A She continued to sit on the stairs to wait for PW5. After about 20 minutes, the appellant left the house. The appellant then asked PW4 why she was looking for the deceased. PW4 replied that she wanted to pay rent to the deceased. The appellant said that the deceased might have been working late that night. Then PW4 saw the appellant walking towards the main road.

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[13] PW3 gave evidence that the appellant had called him at about 9pm that night in a panicky and hurried voice. The appellant asked PW3 to pick him up at the house, but PW3 refused as he had another customer. PW3 also told the appellant that he was already heading home.

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[14] PW5 reached home between 9pm to 9.30pm that night. At that time, the appellant had already left the house. PW5 did not see the appellant that night. PW4 opened the gate for her. PW5 told PW4 that she tried to contact the deceased through Whatsapp, but the deceased did not reply to her message.

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[15] That night, PW4 slept in PW5's room. PW4 told PW5 that she saw the appellant in the deceased's room. After PW4 described the appellant to her, PW5 said that the appellant was her ex-boyfriend, who had a duplicate set of keys to the house and her room. PW5 gave evidence that she noticed her mascara and hair straightener went missing. According to PW5, the appellant had asked her to return those items a few days before.

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[16] On the next day, ie, on 2 August 2018, the deceased's husband, PW16, tried calling her again the next morning and afternoon, yet his calls remained unanswered. PW16 called the deceased's colleague, who told him the deceased did not come to work that morning. PW16 requested the deceased's colleague to go and check at the house.

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G **[17]** At around 2.30pm, the deceased's colleagues went to the house to look for her. PW4 and PW5, together with the deceased's colleagues knocked on the deceased's door and called out her name but to no avail. PW4 then kicked and broke open the door. She looked under a pink blanket and saw a motionless body with all limbs tied up. She screamed, and the four of them ran out of the

H deceased's room.

[18] Kpl Muhd Badrul Aman bin Azhar ('PW2'), a police officer, testified that he went to the house at his wife's request, who called him at about 2.54pm PW2's wife was one of the deceased's colleagues. He immediately went to the

I house, entered the deceased's room, and saw what appeared to be a dead body.

[19] PW2 called his colleagues, who arrived at the house around 3.30pm senior investigating officer ASP Sylvarius Gopog ('PW19') and investigating officer Insp Stiffan Lewler Ating ('PW15') were amongst those who arrived at

the house. PW19 instructed PW15 to seize various items in the deceased's room for investigation.

[20] D/Kpl Zulkifli bin Ramlee ('PW17') was instructed to take photographs of the crime scene, material evidence and the post mortem examination which were all later marked as exhibits during the trial.

[21] At around 3.33pm, Donny ak Tambi, a medical assistant from Sibu Hospital's Department of Emergency and Trauma ('PW12'), arrived at the crime scene. He testified that he saw a female body facing the floor with her hands tied with a lanyard, to which a National Registration Department staff card bearing the deceased's name was attached. He used a cardiac monitor to examine the body. There was no heartbeat, and the deceased was confirmed dead.

[22] Ting Yin Yin ('PW7'), who worked at Kaban Goldsmith, No 24, Jalan Kho Peng Loong, Sibu, testified that on the same day (2 August 2018) the appellant had come to the shop and handed over a gold-yellowish necklace to be pawned. PW7 asked the appellant whether the necklace was his or stolen, and the appellant replied that it was his. PW7 then recorded the details of the appellant's identification card and his phone number. A copy of the appellant's identification card and the necklace was kept for the shop's record. The appellant was paid RM600. The necklace weighed 4.4g. After completing the transaction, PW7 issued a copy of the payment voucher No E18–495 and informed her boss Lim Tze Wen ('PW8'), about the transaction.

[23] Edwin ak Entry, the owner of Top Mobile Trading located at 26 Market Road, Sibu, Sarawak ('PW13'), testified that on 2 August 2018 at around 10.30am, the appellant went to his shop to unlock a Vivo V7 phone. The appellant claimed that he had forgotten the password to the phone.

[24] After PW13 unlocked the phone, he did a test to check whether the images and phone numbers were still there. In the process, PW13 saw selfie images of a woman with a tudung, whom he later found out to be the deceased. PW13 said he was shocked to find out that evening, through Facebook, that there was viral news of a female corpse discovered at a house in Sibu accompanied by an image of the deceased, which he saw on the phone.

[25] On the same day, at around 3.15pm, the appellant went to another phone shop, the New Hong Kong Company, at No 13, Lane 1, Brooke Drive, Sibu, to sell the phone. The shop owner, Pau Chii Fatt ('PW9'), bought the phone from the appellant for RM300 and issued him a receipt. PW9 had also recorded the appellant's name after being shown his identity card.

[26] On 3 August 2018 at around 9.30pm, Dr Norliza bt Ibrahim, Head of the Department of Forensic Medicine Specialist, Forensic Medicine Department, Sarawak General Hospital ('PW11'), conducted a post mortem on the deceased's body at Sibu Hospital. Her husband, PW16 and the senior investigating officer PW19 had identified the deceased. The post mortem ended at around 3.10am the following day.

[27] PW11, in her evidence, stated that:

> 10. External examination revealed that the deceased suffered 28 external marks of injuries. All of the injuries were as a result of blunt force trauma. Majority of the injuries were seen on the head, face and neck. The blunt force trauma were consistent to be caused by something hard and blunt object such if the deceased was hit by something blunt and hard such as wood, iron or any other similar object, or she was struck on hard and blunt surface. Some of the injuries were consistent with rope tying (injury no 9, 12, 16 and 26) and strangled by ligature (injury no 7).
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> 11. Injuries seen on the deceased's external genitalia as per paragraph 5 at page 3 of AUTOPSY REPORT OF PRISCILLA ANAK EDWARD were consistent due to blunt and hard object such as inserting wood, rod, penis or any other similar object.
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> 12. Internal examination also revealed the deceased suffered subgaleal haematoma (bruising underneath the scalp), subdural haemorrhage (bleeding underneath the brain covering) on the left temporo-parietal and right frontal of the brain, subarachnoid haemorrhage (bleeding on the surface of the brain) on the right frontal, right parietal left frontal and left temporoparietal of the brain, skull fracture on the left side of posterior cranial fossa and minimal left cerebellar haemorrhage. In my opinion the injuries to the head that lead to the deceased's death.

[28] The autopsy report was marked as exh P16 while the medical certificate on the cause of death was marked as exh P17.

[29] By that time, statements of PW4 and PW5 had already been recorded by the police, and the appellant was identified as the suspect.

[30] On 7 August 2018 at around 10.40am, Insp Mohamad Rafi bin Mohamad Jaraee ('PW18') led a team of police officers to Rumah Panjang Hong Sing Sing, Ng Bilat, Julau, Sarawak, where the appellant was arrested inside a toilet in Room No 5. A plastic water bottle suspected to contain poison was seized from a garbage bin in the kitchen. The appellant was suspected of having drunk poison. He was immediately taken to Sibu Hospital.

[31] According to the senior investigating officer PW19, he went to Sibu Hospital to see the appellant in the evening. After being asked why he was in the hospital, the appellant told PW19 that he tried to commit suicide by drinking a mixture of Clorox and urea.

[32] On 9 August 2018, based on the information given and led by the appellant himself, Insp Baharuddin bin Sabang ('PW14') and his team of police officers successfully retrieved the gold necklace and the Vivo V7 phone from Kaban Goldsmith and New Hong Kong Co respectively. The relevant payment voucher and receipt were also retrieved by PW14, which were marked as court exhibits.

[33] The deceased's husband, PW16, identified the gold necklace and the phone as personal items belonging to the deceased. PW16 could identify the gold necklace because the deceased wore it every day and never removed it. PW16 could also identify the phone as he was the one who bought the phone and gave it to the deceased on her 26th birthday, five months earlier. He could also identify the box for the phone, which was also seized by the police. He stated that he turned on her handphone and logged in to her email, nurniaazalia@gmail.com, and there was a backup file with her photographs.

[34] The appellant was positively identified by PW3, PW4, PW7, PW8 and PW13 during the identification parade and whilst he was in the dock. The identification evidence was not challenged.

[35] The phone was sent to Unit D10, Siasatan Jenayah Komputer, PDRM Cheras, Selangor, for examination. The report and CD containing data extracted from the phone confirmed that the phone belonged to the deceased.

FINDINGS OF THE LEARNED TRIAL JUDGE AT THE END OF PROSECUTION'S CASE

[36] At the close of the prosecution's case, the learned trial judge found that the prosecution had successfully proven a prima facie case against the appellant for the charge of murder under s 302 of the Penal Code. The appellant was consequently ordered to enter his defence.

THE DEFENCE'S CASE

[37] During the defence's case, the appellant gave evidence on oath. He did not call other witnesses.

[38] The appellant, in his sworn defence, did not deny:

(a) going to the house or meeting PW4 in the manner PW4 had described;

(b) taking what he said were his personal belongings from PW5's room;

(c) taking the deceased's gold necklace and phone, and then pawning the gold necklace and the phone (which was actually sold); and

(d) drinking a mixture of Clorox and urea in an attempt to commit suicide.

[39] However, the appellant said he went to the house on 30 July 2018, not 1 August 2018. The appellant's version is that on 30 July 2018, he was in the house and saw the door to the deceased's bedroom was unlocked. He saw the phone on the bed and he stole it. He also stepped on something and found that it was a gold necklace, which he stole.

FINDINGS OF THE LEARNED TRIAL JUDGE AT THE END OF DEFENCE'S CASE

[40] At the close of the defence's case, the learned trial judge found that the appellant had failed to raise any reasonable doubt in the prosecution's case and that the prosecution had successfully proven its case beyond reasonable doubt against the appellant. As a result, the appellant was found guilty and convicted of murder under s 302 of the Penal Code. Consequently, he was sentenced to death.

ISSUES

[41] The issues in this appeal, as raised by the appellant in his petition of appeal, were as follows:

(a) that the learned trial judge erred in law and fact in deciding that the prosecution had proven a prima facie case against the appellant;

(b) that the learned trial judge erred in law and fact when he failed to appreciate that there was a reasonable doubt in the prosecution's case;

(c) that the learned trial judge had misdirected himself when he failed to appreciate the whole evidence of the defence case in making a finding of guilt of the appellant; and

(d) that the learned trial judge failed to address his mind regarding the circumstantial evidence and, therefore, failed to make a proper finding of fact and law.

FINDINGS OF THE LEARNED TRIAL JUDGE WHICH WERE NOT DISPUTED

[42] At the outset, we note that there was no dispute by the parties to this appeal on the findings of the learned trial judge that:

(a) the deceased had died (see para 52 of the learned trial judge's grounds of judgment);

(b) the deceased's death was caused by the bodily injury or injuries inflicted on her (see para 53 of the learned trial judge's grounds of judgment); and

(c) the act of causing death was committed with the mens rea under the limbs of s 300 of the Penal Code, specifically under limb (c) (see paras 54 and 77 of the learned trial judge's grounds of judgment).

[43] The core issue in this appeal is whether the appellant was the one who had caused the bodily injuries inflicted on the deceased, which led to her death.

OUR ANALYSIS AND FINDINGS

[44] First and foremost, we agree with the learned trial judge that the prosecution's case against the appellant was wholly based on circumstantial evidence. In the present case, no eyewitnesses saw the appellant committing the offence.

[45] There are many authorities on how the courts should deal with circumstantial evidence in appropriate cases.

[46] We start by referring to the oft-quoted passage of Thomson CJ's (as he then was) judgment in *Chan Chwen Kong v Public Prosecutor* [1962] 1 MLJ 307; [1962] 1 LNS 22 (CA) reproduced below:

> In the first place we have listened to a careful, accurate and detailed analysis of the evidence against the appellant. That evidence was entirely circumstantial and what the criticism of it amounts to is this, that no single piece of that evidence is strong enough to sustain the convictions. That is very true. It must, however, be borne in mind that *in cases like this where the evidence is wholly circumstantial what has to be considered is not only the strength of each individual strand of evidence but also the combined strength of these strands when twisted together to make a rope. The real question is: is that rope strong enough to hang the prisoner?* (Emphasis added.)

[47] Thus, in cases where the prosecution is wholly relying on circumstantial evidence to prove their case, the onus is heavy, and the evidence must point irresistibly to the conclusion of the guilt of the accused.

[48] The Federal Court in *Chang Kim Siong v Public Prosecutor* [1968] 1 MLJ 36; [1967] 1 LNS 18 through Pike CJ (Borneo) (as he then was) held in no uncertain terms that:

> ... The onus on the prosecution when the evidence is of a circumstantial nature is a very heavy one and that evidence must point irresistibly to the conclusion of the guilt of the accused. If there are gaps in it then it is not sufficient ...

[49] See also *Lim Hean Chong @ Teo Hean Chong v Public Prosecutor* [2012] 1 MLJ 149; [2012] 2 CLJ 1046 (CA) and *That Wei v Public Prosecutor* [2021] 6 MLJ 167; [2021] 1 LNS 1358 (CA).

[50] The essential principles relating to circumstantial evidence have been aptly encapsulated by Visu Sinnadurai J (as he then was) in *Public Prosecutor v Sarjit Kaur a/p Najar Singh* [1998] 1 MLJ 184; [1998] 5 CLJ 609, which has been cited with approval by the Federal Court in *Low Kian Boon & Anor v Public Prosecutor* [2010] 4 MLJ 425; [2010] 5 CLJ 489 as can be seen below:

> [16] The subject of circumstantial evidence has been given detailed attention in *Public Prosecutor v Sarjit Kaur a/p Najar Singh* [1998] 1 MLJ 184; [1998] 5 CLJ 609. In the judgment of Visu Sinnadurai J (as he then was), I find the following relevant:
>
> Law on circumstantial evidence
>
> *Circumstantial evidence is evidence of circumstances surrounding an event or offence from which a fact in issue may be inferred. Some examples of circumstantial evidence are: (a) motive; (b) acts preparatory to the commission of the offence; (c) fingerprints; (d) possession of stolen goods; and (e) presumptions of fact*.
>
> The law on circumstantial evidence is stated by the learned editors of *Blackstone's Criminal Practice* 1991 at pp 1674–1675 as follows:
>
> > Circumstantial evidence is to be contrasted with direct evidence. Direct evidence is evidence of facts in issue, in the case of testimonial evidence, it is evidence about facts in issue of which the witness claims to have personal knowledge, for example, 'I saw the accused strike the victim'. *Circumstantial evidence is evidence of relevant facts, ie facts from which the existence or non-existence of facts in issue may be inferred, it does not necessarily follow that the weight to be attached to circumstantial evidence will be less than that to be attached to direct evidence*. For example, the tribunal of fact is likely to attach more weight to a variety of individual items of circumstantial evidence, all of which lead to the same conclusion, than to direct evidence to the contrary coming from witnesses lacking in credibility.
>
> The learned editors point out further:
>
> > *Circumstantial evidence 'works by cumulatively, in geometrical progression, eliminating other possibilities'* (*Director of Public Prosecutions v Kilbourne* [1973] AC 729 per Lord Simon at p 758). Pollock CB, likening circumstantial evidence to a rope comprised of several cords, said:
> >
> > > *One strand of the cord might be insufficient to sustain the weight, but three stranded together maybe quite of sufficient strength*.
> >
> > *Thus, it may be in circumstantial evidence that there may be a combination of circumstances, no one of which would raise a reasonable conviction or more than a mere suspicion but the whole, taken together, may create a strong conclusion of guilt, that is with as much certainty as human affairs can require or admit of* (Exall (1866) 4 F&F 922 at p 929).
> >
> > However, although circumstantial evidence may sometimes be conclusive, it must always be narrowly examined, if only because it may be fabricated to cast suspicion on another. For this reason, it has been said that:

> It is also necessary before drawing the inference of the accused's guilt from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference (*Teper v The Queen* [1952] AC 480 per Lord Normand at p 489).

> Nonetheless, there is no requirement, in cases in which the prosecution's case is based on circumstantial evidence, that the judge direct the jury to acquit unless they are sure that the facts proved are not only consistent with guilt but also inconsistent with any other reasonable conclusion (*McGreevy v Director of Public Prosecutions* [1973] 1 WLR 276).

Similar to the English position, it is also now established in Malaysia that in cases where circumstantial evidence is relied upon by the prosecution, the proper test to be applied by the judge trying a case without the jury is for the judge:

> ... to remember only that the prosecution need to prove its case beyond reasonable doubt, and failure by him to also say that the circumstances are not only consistent with the accused having committed the crime but also such that they are inconsistent with any other reasonable explanation, is not fatal. In other words, ... in a case depending on circumstantial evidence, it is enough if the court merely says that it is satisfied of the accused's guilt beyond reasonable doubt, without further saying that the facts proved irresistibly point to one and only one conclusion, namely the accused's guilt (per Suffian LP in *Jayaraman & Ors v Public Prosecutor* [1982] 2 MLJ 306; [1982] 1 LNS 126 at p 310).

...

Similarly Mohd Azmi SCJ (as he then was) in *Ng Thian Soong v Public Prosecutor* [1990] 2 MLJ 148; [1990] 1 CLJ Rep 202 observed (at p 151):

> It must be noted at this point since *Jayaraman & Ors v Public Prosecutor* [1982] 2 MLJ 306; [1982] 1 LNS 126, the then Federal Court had applied *McGreevy v Director of Public Prosecution* [1973] 1 WLR 276, by holding that a trial judge's direction to the jury on burden of proof is the same whether the prosecution's evidence is direct or circumstantial, ie proof beyond reasonable doubt. *Where the evidence is circumstantial, there is no further duty on the judge as in the past, to direct the jury that the evidence must be such as to be inconsistent with any other reasonable conclusion or hypothesis than the guilt of the accused in addition to proof beyond reasonable doubt.*

His Lordship then added at p 151:

> But be that as it may, these authorities do not relieve the trial judge from the duty to make a balanced direction to the jury on other reasonable inference that could be drawn from any particular circumstantial evidence, particularly where they are equally favourable to the accused.

Though some of these observations were made in cases where the trial was with a jury, they are equally applicable with the necessary modifications to a trial conducted by a judge sitting alone without a jury, as I do in the present case.

Inferences from circumstantial evidence

In determining the proper inference to be drawn from circumstantial evidence, the Supreme Court in *Ng Thian Soong v Public Prosecutor* …:

> … Where the strands of circumstantial evidence connecting the accused with the crime are capable of more than one inference, it is not sufficient for the trial judge merely to tabulate the indirect evidence. He must go one step further by directing the jury what other reasonable inferences could be drawn from each strand of circumstantial evidence, and leaving it to the jury to decide which inference they wish to adopt. It is only when the combined strength of these inferences accepted by the jury when twisted together is strong enough to constitute proof beyond reasonable doubt that a finding could be arrived at as to the guilt of the accused.

His Lordship then concluded (at p 150):

> Bearing in mind that unlike statutory presumption, there is no shift in the burden of proof on the prosecution where the evidence is circumstantial, it is necessary for the trial judge not to give the impression that there need only be one inference that can be drawn from every circumstantial evidence. The principal circumstantial evidence in the present case are clearly open to more than one reasonable or plausible inference, and failure to put them squarely to the jury would in the circumstances occasion a miscarriage of justice.
>
> His Lordship pointed out that it was the duty of the trial judge to make a balanced consideration of other reasonable inferences that could be drawn from any particular circumstantial evidence, particularly where they were equally favourable to the accused.
>
> Circumstantial evidence can sometimes be stronger than direct evidence as there is no possibility of it being like a witness's testimony which may be lacking in truth or accuracy. In circumstantial evidence, the motives or acts speak for themselves, sometimes louder than the words of a witness, without any embellishment.
>
> *It should also be pointed out that circumstantial evidence does not depend on hypothesis, or theories, or even speculations. They must give rise to strong inferences so as to become the best evidence*. (Emphasis added.)

[51] We now turn to the facts in the present case to address the circumstantial evidence adduced by the prosecution against the appellant and the relevant issues raised therein.

[52] First and foremost, evidence has shown that the deceased was last seen alive by her husband, PW16, through a video call on 1 August 2018 at around 7.30pm. At that time, the deceased told PW16 that she had arrived at the gate of the house and that she would call him later. Nobody had seen or heard from her since. The appellant did not challenge this evidence. Her body was found inside her room at around 2.30pm the next day (2 August 2018).

[53] Secondly, we agree with the learned trial judge's finding that the evidence of eyewitnesses (who could identify the appellant) had placed the appellant squarely at the crime scene on 1 August 2018 from around 7.45pm to 9.30pm. This is based on the evidence of PW3 (who dropped the appellant off at the house on 1 August 2018 at around 7.45pm) and PW4 (who saw the appellant inside the house and the bathroom until he left before PW5 came back home at around 8.30pm to 9.30pm).

[54] It is pertinent to note that the evidence of PW3 and PW4 above was never challenged. As correctly noted by the learned trial judge, it was never put or suggested to PW3 and PW4 that they were mistaken or wrong regarding their recollection of the date when the appellant went to the house. Even their identification evidence was not challenged.

[55] It is trite that failure to cross-examine a witness on a crucial part of the case will amount to an acceptance of the witness's testimony (per Raja Azlan Shah CJ (Malaya) (as His Royal Highness then was) in *Wong Swee Chin v Public Prosecutor* [1981] 1 MLJ 212; [1980] 1 LNS 138 (FC)).

[56] We also see no reason to disturb the learned trial judge's finding that PW3 and PW4 were disinterested parties who did not know each other and had no reason to frame the appellant.

[57] For the reasons above, we agree with the learned trial judge who rejected the appellant's defence that he went to the house on 30 July 2018 but not on 1 August 2018. Furthermore, the appellant did not give any alibi notice, and he did not give any evidence of his whereabouts during the time specified in the charge.

[58] Thirdly, evidence has shown that the appellant had access to the house, and he usually frequented the house twice or thrice a week. PW5, the appellant's ex-girlfriend, testified that the appellant had spare keys to the house and her room. This evidence was not challenged.

[59] Fourthly, PW4's evidence of her encounter with the appellant inside the house until he left the house (as mentioned above) remained unshaken. In fact, the appellant admitted to the evidence of PW4 during his defence.

[60] Fifthly, the evidence of PW6 also remained unshaken that on 1 August 2018 at around 8.30pm, he heard a loud 'AAAA' scream by a woman three times. He said he was confident that the screams were coming from the ground floor. However, PW6 did not suspect anything amiss and went to sleep.

[61] On this evidence, the learned counsel for the appellant submitted that it is not possible for PW6, who stayed on the first floor, to hear the screams coming from the ground floor but PW4, who sat on the stairs beside the main entrance of the ground floor did not hear anything. The learned counsel for the appellant further submitted that there were discrepancies in their evidence, and one of them was lying in court.

[62] We found that the learned trial judge adequately addressed this issue in his grounds of judgment.

[63] It can be seen that the learned trial judge had accepted the evidence of PW6 that he heard three loud women's screams from the ground floor, as can be seen below:

> 73. Importantly, at about 8.30pm that day, PW6 heard a woman's scream three times, emanating from the ground floor. Learned counsel for the accused suggested that 'tolong' would normally be screamed or yelled by someone in distress and PW6, the tenant upstairs did not specifically say that it was the deceased's voice. There is no basis to say that a crime victim will necessarily shout or scream 'tolong' or 'help,' and since the scream was not articulated in words, it is not surprising PW6 did not claim that to be the voice of the accused. PW6, it will be recalled, went to sleep, thinking it was a woman screaming on seeing a snake in the back garden.
>
> 74. As to why PW4 did not hear the scream, it could well be that she was outside the house, as she testified, waiting for PW5 to return home. *Given that PW6 heard the screams at an approximate time of 8.30pm and PW4 had returned to the house with her shopping as late as just before 8.30pm, PW6 may well have heard the screams before PW4 got to the house*.
>
> 75. *It is not really in dispute that PW6 heard screaming from the ground floor that night, and he was not challenged in cross-examination in that regard*. The accused's contention is that the deceased did not scream 'tolong' or used words to that effect, which would otherwise have allowed the voice to be identified. *Be that as it may, it can be confidently said that it was the deceased who screamed. There was no other person on the ground floor at about 8.30pm, except for PW4. There was no evidence, neither was it put to PW4, that she was the one who had screamed*. (Emphasis added.)

[64] It is important to note that PW4 was never cross-examined on this issue. PW6's evidence remained unshaken. As can be seen in the appeal records, the only challenge mounted by the appellant through his counsel against the evidence of PW6 was as follows:

> Q98: I put it to you and you are free to agree with me and not agree with me, at least in so far your allegation as hearing a woman voice screaming 'AAAAAA ...' is not correct. Do you agree?
>
> A: I disagree.
>
> Q99: Regardless you do not know who was screaming then, do you?

A: Correct.

Mr Rosli: No further questions.

[65] In our view, the learned trial judge's finding above was justified based on all evidence adduced before him.

[66] In *Chean Siong Guat v Public Prosecutor* [1969] 2 MLJ 63; [1969] 1 LNS 23, Abdul Hamid J (as he then was) opined, to which we agree, that:

> Discrepancies may, in my view, be found in any case for the simple reason that no two persons can describe the same thing in exactly the same way. *Sometimes what may appear to be discrepancies are in reality different ways of describing the same thing, or it may happen that the witnesses who are describing the same thing might have seen it in different ways and at different times and that is how discrepancies are likely to arise*. These discrepancies may either be minor or serious discrepancies. Absolute truth is I think beyond human perception and conflicting versions of an incident, even by honest and disinterested witnesses, is a common experience. In weighing the testimony of witnesses, human fallibility in observation, retention and recollection are often recognised by the court. Being a question of fact, what a magistrate need do is to consider the discrepancies and say whether they are minor or serious discrepancies. If, after conthem. On the other hand, if a magistrate finds that the discrepancies do not detract from the value of the testimony of the witness or witnesses, it would then be proper for him to regard the discrepancies as trivial and ignore them. On the other hand, if a magistrate finds that the discrepancies relate to a material point which would seriously affect the value of the testimony of the witness or witnesses, then it would be his duty to weigh the evidence carefully in arriving at the truth.

[67] Sixthly, there was evidence that the appellant had given information to the police, which led to the discovery of the deceased's gold necklace and phone. The appellant was also the one who led the police to recover these items. The appellant did not challenge the evidence. As such, the appellant's knowledge regarding the whereabouts of the deceased's gold necklace and phone can be safely inferred.

[68] According to the unchallenged evidence of PW16, the gold necklace and the phone personally belonged to the deceased. PW16 further testified that the deceased wore the gold necklace every day and never removed it. PW16 could also identify the phone as he was the one who bought the phone and gave it to the deceased on her 26th birthday, five months earlier.

[69] Evidence has also shown that the appellant had pawned the deceased's gold necklace and sold off her phone the day after he was seen in the house. This is also the day the deceased's body was found in her room. In our view, the time gap between these events is too small, and it only points to the fact that the

appellant did take the deceased's gold necklace and phone when he was at the house on 1 August 2018 at around 7.45pm to 9.30pm.

[70] It is also important to note that the appellant did admit stealing the phone and the gold necklace from inside the deceased's room. His admission puts him in the deceased's room, the crime scene. But the appellant's version is that he stole the items on 30 July 2018 and not on 1 August 2018. He testified as follows:

> Q395: There is an evidence to show that you pawned her Vivo hand phone and her gold necklace. How do you come into possession of these 2 items?
>
> A: I took these 2 items from her room on the night of 30 July 2018 when her room was unlocked.
>
> Q396: Was she in her room at that time?
>
> A: No.
>
> Q397: So you took these 2 items when she was not there and what did you do thereafter?
>
> A: Before I took the items, I entered into my ex-girlfriend's room and took my belongings there. After that, I went to the bathroom. When I was on my way to the bathroom, I saw the door of the deceased's room was unlocked and a bit open. I proceeded to the bathroom. When I returned back then I entered into the deceased's room. I saw one hand phone on the mattress. I took it as I saw nobody there. When I was about to go out from her room, I felt that I stepped on something and when I looked down, I saw one gold necklace. I took it and put it inside my pocket. Then I went back to the bathroom to wash my hands. When I came out from the bathroom, I was surprised when I saw there was somebody there, not far from me but she looked normal ie she didn't look surprised when she saw me. I did ask her how you entered this house and she replied, I entered from the main door. I asked her again, where she got the key of the main door and she said she got it from her friend. And she just walked away and went out from the house.
>
> Then, I entered the bathroom again. After that, I went to my ex-girlfriend's room but when I was on my way to her room, I saw the deceased's door room was closed. Then, I just entered my ex-girlfriend's room and took my belongings and went out. I did lock my ex-girlfriend's room. When I went out from that house, I saw the girl that I saw earlier was seated at the staircase outside. I asked her, you didn't go home and she said, no as I am still waiting for my friend. Then I just walked away from that place.

[71] We also agree with the learned trial judge that there was no evidence that anyone else had been in the deceased's room on the evening of 1 August 2018. Based on the evidence and the appellant's admission, he was the last person seen and known to be at the crime scene.

[72] In his defence, the appellant explained that even though he had taken

the deceased's gold necklace and phone inside the deceased's room, he did not see the deceased in her room then. The appellant also denied having any physical contact with the deceased. At most, the appellant should be found guilty of theft and not murder.

[73] In his grounds of judgment, the learned trial judge did consider the appellant's explanation and ultimately found that his explanation did not create any reasonable doubt in the prosecution's case. In our view, the learned trial judge's finding above was correct and based on all available evidence before him.

[74] Hence, we found that the totality of the evidence and the prevailing surrounding circumstances irresistibly point to the fact that the deceased's belongings could not have been transferred from the deceased to the appellant (and after that to the relevant witnesses) except after the appellant had murdered the deceased. In our view, the appellant's explanation that he stole the gold necklace and phone on 30 August 2018 was nothing more than a mere denial or a concoction. It was an afterthought. Indeed, if the phone had been stolen on 30 July 2018, then it is impossible for the deceased to have spoken to PW16 via video call on 1 August 2018 at 7.30pm. This alone demolishes the appellant's purported theft on 30 July 2018

[75] Similarly, in *Noralina Ahmad Dasuki & Anor v Public Prosecutor* [2013] 1 LNS 1477, the deceased handphone was found to be sold by the first appellant to a prosecution's witness on the same day when the body of the deceased was found and the day after the deceased was murdered. Mohtarudin Baki JCA (as His Lordship then was), speaking for this court, held:

> [22] It is our considered view, that the totality of the evidence and the prevailing surrounding circumstances when taken together irresistibly point to the fact that the possession of *the personal belongings of the deceased could not have been transferred from the deceased to the appellant except after the deceased was murdered by the appellant*. The entire evidence presented by the prosecution against the appellants was compelling. At this juncture, we refer to Azahar Mohamed JCA's judgment in *Ali Tan bin Abdullah v Public Prosecutor* [2013] 2 MLJ 676; [2013] 4 CLJ 757; [2013] 1 AMR 289 at pp 298 when His Lordship opined that:
>
> > *The fact of recovery of articles belonging to the first victim, the nature of the articles, the manner in which the articles were dealt with by the appellant, the circumstances of the recovery of the articles, the length of time after which the discovery of the articles was affected, the admission of the appellant that he entered the victim's apartment and the injuries suffered by the victims; all taken cumulatively and considered together form a chain so complete in pointing towards the guilt of the appellant and no one else.* It is true that if two views are possible on the evidence adduced in a case, one pointing to the guilt of the accused and the other to his innocence, the view which is favorable and beneficial to the accused should be adopted (see *Tai Chai Keh v Public Prosecutor* [1948-1949] supp MLJ 105b; [1948] 1 LNS 122).

> *This is certainly not the case here. In our judgment, this is a case where murder and theft committed by the appellant have been proved beyond reasonable doubt to form part of one and the same transaction.*
>
> *Indeed, mere denial or presenting a bare story of innocence, such as in the circumstances of the instant case, cannot amount to reasonable doubt. The court's acceptance of the explanation offered by an accused person must be based upon reason and common sense, and cannot be illogical or* irrational. The existence of reasonable doubt is dependent upon the totality of the evidence and on an examination of all the evidence in a fair and reasonable manner and not in isolation. (Emphasis added.)

[76] See also *Public Prosecutor v Azilah bin Hadri & Anor* [2015] 1 MLJ 617; [2015] 1 CLJ 579 (FC), *Public Prosecutor v Lim Kiang Chai* [2016] 2 MLJ 153; [2016] 4 CLJ 173 (FC), *Krishna Rao Gurumurthi & Anor v Public Prosecutor and another appeal* [2007] MLJU 888; [2007] 4 CLJ 643 (CA), and *Amathevelli a/p R Ramasamy v Public Prosecutor* [2008] 3 MLJ 782; [2008] 4 CLJ 413 (CA).

[77] Based on all of the above, we agree with the learned trial judge that the various strands of circumstantial evidence, cumulatively considered, point to the irresistible conclusion that the appellant had murdered the deceased on the date and time as per the charge.

[78] We also observed that the learned trial judge was always mindful of the relevant principles on the burden of proof throughout the trial. There was no misdirection on the part of the learned trial judge in all of his findings.

CONCLUSION

[79] In conclusion, the learned trial judge was satisfied that the appellant had failed to raise any reasonable doubt on the prosecution's case and that the prosecution had proven their case against the appellant beyond reasonable doubt. We completely agree with the learned trial judge.

[80] We are also satisfied that the learned trial judge had not misdirected himself to occasion an error either on the law or the facts, which would otherwise warrant appellate intervention.

[81] Our decision is unanimous, and we found no merits in this appeal.

[82] Hence, we dismissed the appellant's appeal and affirmed the conviction and sentence against the appellant on the said charge.

Appeal dismissed; conviction and sentence against appellant affirmed.

Reported by Dzulqarnain Ab Fatar